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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,324	09/28/2001	Michael S. Hildreth	43702-251979	3168

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JOHN S. PRATT, ESQ
KILPATRICK STOCKTON, LLP
1100 PEACHTREE STREET
SUITE 2800
ATLANTA, GA 30309

EXAMINER

COMSTOCK, DAVID C

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 02/27/2004

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/966,324

Applicant(s)

HILDRETH, MICHAEL S.

Examiner

David Comstock

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Gresham et al. (2,937,649).

Gresham et al. disclose a hair treatment device comprising a hollow compressible hair roller body 20 placed on a base implement (see Figs. 1 and 3). The base implement comprises a first end 15 and a second end 18, each end having a cut-out shoulder 16 and 23, respectively, defining a cradle--i.e. a structure or support that holds something. The cradle on the first end 15 receives a notch 17. The base implement also comprises a support rod 13 connecting the first and second ends at the middle of the ends, i.e., the support rod and the cradles are all situated along a central axis (see Figs. 3 and 6). The support rod includes a support arm 10 (see Figs. 3 and 4).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 5, 9-11, 14, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gresham et al. (2,937,649).

Gresham et al. disclose the claimed invention as set forth above in the rejection under 35 USC 102, except that a tab 24 of reduced diameter or width as compared to the support arm 10 is used instead of a notch for engagement with the cradle on the second end 18 (see Fig. 3). Such tabs and notches are functionally equivalent means of engagement known in the art. Therefore, it would have been obvious to a person of ordinary skill in the art to substitute a notch for a tab in order to provide a means of engagement. With regard to claim 2, the body is made of foam or sponge rubber which is a lightweight, heat-insulating material (see col. 2, lines 26-29). Gresham et al. disclose using the device by wrapping hair around the compressible roller body (see Fig. 5 and col. 2, lines 29-31). The base implement and support arm are rested on the user's scalp (Fig 5). The hair roller and base implement are engaged by insertion into the first and second cradle (Fig. 1). Solutions are applied to the hair (see col. 4, lines 1-4). It is inherent in such devices and processes to remove the hair from the roller after curling. Alternatively, it is old and well-known in the art to remove the hair from the roller after curling. Likewise, it is old and well-known in such devices and processes to utilize heat and to rinse solutions out prior to removing hair from the curler. The compressible foam body is operative to accomodate pressure from the hair wrapped therearound (see col. 1, lines 37-46).

Claims 3, 12, 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gresham et al. (2,937,649), as applied to claims 1 and 9 above, and further in view of Leveque et al. (5,280,795).

Gresham et al. disclose the claimed invention, as set forth above in the rejection of claims 1 and 9, except for the supporting coil inside the roller body. Leveque et al. provides a hair roller with a coil support 12 inside the hair roller to provide a means for expansion when subjected to heat to effect a better, longer-lasting curl (see Fig. 2; col. 1, lines 21-25, 34, 35, 40, and 41; col. 2, lines 15-17; and col. 4, lines 66-68). It would have been obvious to a person of ordinary skill in the art at the time of the invention to provide the roller of Gresham et al. with a coil support structure therewithin, in view of Leveque et al., in order to provide a means for expansion of the roller and effect a better, longer-lasting curl. With regard to claims 15 and 17, it is old and well-known in the art to use chemical solutions that generate heat.

Response to Arguments

Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of *that* action is withdrawn.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Applicant added the following limitations to the independent claims: claim 1: "wherein said roller body comprises a hollow core and wherein said roller body is operative to accommodate pressure"; claim 6: "wherein a hair roller having a compressible roller body is placed upon said base implement"; claim 9, "wherein said roller body comprises a hollow core and wherein said roller body is operative to accommodate pressure".

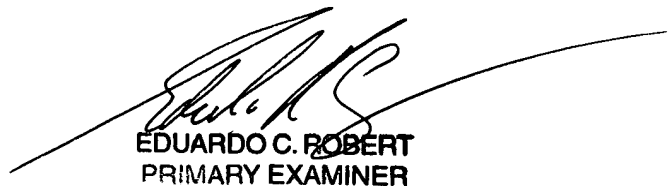
Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Comstock whose telephone number is (703) 308-8514.



D.C. Comstock
19 February 2004



EDUARDO C. ROBERT
PRIMARY EXAMINER